

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification and)	CC Docket No. 96-128
Compensation Provisions of the)	
Telecommunications Act of 1996)	

**CINCINNATI BELL ANY DISTANCE REPLY TO
OPPOSITION OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

On December 6, 2004, the American Public Communications Council ("APCC") filed in opposition to ten requests for temporary waivers of the audit requirement of Section 64.1320 of the Federal Communications Commission's ("FCC") rules.¹ One of the requests to which APCC objects is the November 22, 2004 Petition for Waiver filed by Cincinnati Bell Any Distance Inc. ("CBAD").² As set forth below, APCC has not provided sufficient justification for denying the CBAD request. Therefore, for the reasons articulated in CBAD's Petition for Waiver, the Commission should grant CBAD's request that it be permitted to file its initial System Audit Report on April 1, 2005, without penalty.

ARGUMENT

The APCC presents three reasons why the requests should be denied. Specifically, APCC claims (1) that the carriers have had more than ample time to complete their audits, (2) that none of the carriers have shown special circumstances sufficient to justify a waiver of the due date, and (3) that none of the petitioners who filed

¹ *Opposition of the American Public Communications Council to Requests for Additional Time to File System Audit Reports*, by Albert H. Kramer, Robert F. Aldrich, Attorneys for the APCC, CC Docket No. 96-128, (December 6, 2004).

² *Petition for Waiver*, Cincinnati Bell Any Distance Inc, by Ann Jouett Kinney, Attorney for CBAD, CC Docket No. 96-128 (November 22, 2004).

requests prior to July 1, 2004, has complied with the alternative due dates proposed in their requests. None of these reasons are valid with respect to CBAD.

With respect to APCC's first claim, as demonstrated in CBAD's Petition for Waiver, CBAD did not have ample time to complete an audit prior to July 1, 2004, because it did not have a switch in place until June 11, 2004. Thus, CBAD could not have had an audit completed for filing on July 1, 2004. As CBAD further explained in its Petition, since the Payphone Order instructed that the audit report should examine the switch-based reseller's *compliance during the previous year*³ (emphasis added) and did not specifically address the situation of a new facilities-based carrier, CBAD believed that it should submit its initial audit report on July 1, 2005, after it had actual data that could be tested in its systems. A report submitted on July 1, 2004, could not attest to CBAD's compliance during the previous year because for CBAD there was no previous year. For these reasons, CBAD submits that APCC's claim that CBAD had sufficient time to complete an audit is incorrect.

APCC's second argument that none of the carriers has shown special circumstances to justify a waiver is equally without merit with respect to CBAD. CBAD's Petition for Waiver clearly explains that it is uniquely situated with respect to the coincidence of the initial System Audit Report filing requirement and the deployment of its switch. Moreover, as a facilities-based carrier, CBAD did not have the option of having an intermediate carrier paying on its behalf. These special circumstances were not contemplated by the Commission in the Payphone Order. In addressing CBAD's situation the APCC claims that CBAD should have established and tested its call tracking

³ See, *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003) ("Payphone Order") at ¶ 41.

systems before they were actually used. CBAD reiterates that it has been tracking calls since July 1, 2004, but that it would have been impossible to have a meaningful review of these systems completed by an outside auditor prior to July 1, 2004. CBAD contends that submitting its initial audit report with less than six months data available for testing would not have provided adequate assurances that its systems are accurately tracking compensable payphone calls.

Finally, APCC's third argument does not apply to CBAD since the date that CBAD has requested for filing its initial System Audit Report has not yet passed.

CONCLUSION

As explained above, CBAD submits that the APCC has not presented sufficient justification for denying CBAD's Petition for Waiver of the initial System Audit Report filing requirement. CBAD's Petition for Waiver meets the Commission's waiver standard by demonstrating that special circumstances exist for granting CBAD's request and that the waiver would be consistent with the principles of the audit requirement rules since an audit report filed on April 1, 2005, will cover the entire period during which compensation is due to payphone providers. In addition, the waiver is in the public

interest because it will ensure that the auditor will be able to perform tests using actual data in order to provide a meaningful and accurate test of the systems. Therefore, CBAD urges the Commission to reject APCC's request and to grant CBAD's Petition for Waiver to allow it to file the initial Systems Audit Report on April 1, 2005, without penalty.

Respectfully submitted,

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Dated: December 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of Cincinnati Bell Any Distance was sent via first-class U.S. Mail, postage pre-paid or via electronic mail, as noted, to the following parties this 16th day of December 2004.

/s/ Patricia L. Rupich
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